



Lansing Office
2323 N Larch Street
Lansing, MI 48906

517.371.1550
Fax 517.371.1131

Detroit Office
26001 Five Mile Road
Redford, MI 48239

313.533.3509
313.533.3574 Fax

House Bill 4773, False Claims Act

The AGC of Michigan is **opposed** to House Bill 4773, An Act Concerning False Claims. The bill would expose innocent persons and lawful entities that submit a claim for payment to the government to civil liability and harsh penalties, *even if* a false claim is not committed.

Under the bill, any person who knowingly submits a false or fraudulent claim for payment or approval to the state is subject to a civil penalty of up to \$10,000, plus three times the amount of the state's damages, and all costs for investigation and prosecution of any civil action brought by the state. HB 4773 permits *qui tam* actions, that is, lawsuits brought by private informants in the name of the government charging fraud on the part of persons who improperly receive or use public funds.

HB 4773 should be rejected by lawmakers because it goes too far. It would be a huge financial burden for legitimate contractors. It would give state agencies undue leverage and, in the current environment, a powerful tool that could easily be used in unintended ways for improper purposes. Further, it poses a tremendous additional risk to contractors and it is unnecessary.

AGC Michigan is **opposed** to HB 4773 because:

- **Potential misuse.** A false claims act is a powerful tool that could be easily misused to intimidate lawful state contractors who are genuinely owed money by the state. On projects where there is little dispute that the cost of construction exceeded the amount called for the work in the contract, there are often differing positions between the contractor and the state agency as to the attribution of responsibility for the cost overruns or the method of calculation of costs. If faced with a threat of a false claims action, a contractor is confronted with a challenging decision: withdraw the legitimate claim for payment or risk civil liability and sanctions. Also, private individuals and some plaintiffs' attorneys could misuse the Act in a variety of ways to pursue frivolous claims in order to collect unjustified bounties under the bill's generous provisions.

- **Damage to a contractor's reputation, bankruptcy and impact on jobs and state revenue.** HB 4773 does not currently offer enough protection to contractors defending frivolous actions, putting honest and reputable contractors—as well as jobs—at risk. Information disclosed by the news media is enough to provide a plaintiff attorney the opportunity to make an allegation against a contractor. It costs thousands of dollars to defend such a suit. Lawful defendants are often forced to spend a great deal of money and settle lawsuits to avoid the nuisance of litigation.
- **Low standard and significant penalties.** A contractor can easily be accused of submitting a false claim to the government. Key elements of a cause of action, such as the term “false”, are not clearly defined in HB 4773. A false claims act does not require a defendant to have intended to deceive the government. Innocent persons and lawful entities that submit a claim for payment to the government would be exposed to civil liability and harsh penalties *even if* a false claim is not committed. The threat of penalties of such magnitude and the potential burden imposed on contractors to comply with investigatory demands could deter contractors from presenting meritorious claims. Therefore, fewer quality contractors will bid for services, raising costs for the state.
- **Unnecessary.** State law already provides sufficient remedies, including actions for fraud or misrepresentation, which can be used effectively by state agencies to address issues related to the bidding and awarding of contracts.